

Amendment No. 1 to HB1449

Curcio
Signature of Sponsor

AMEND Senate Bill No. 1528*

House Bill No. 1449

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-432, is amended by adding the following language as a new subsection:

(h)

(1) Notwithstanding subsection (d) or (e) or any other law to the contrary, the court that imposed a sentence for an offense committed under this section that occurred prior to September 1, 2020, may, upon motion of the defendant or the district attorney general or the court's own motion, resentence the defendant pursuant to subsections (a)–(g). The court shall hold an evidentiary hearing on the motion, at which the defendant and district attorney general may present evidence. The defendant shall bear the burden of proof to show that the defendant would be sentenced to a shorter period of confinement under this section if the defendant's offense had occurred on or after September 1, 2020. The court shall not resentence the defendant if the new sentence would be greater than the sentence originally imposed or if the court finds that resentencing the defendant would not be in the interests of justice. In determining whether a new sentence would be in the interests of justice, the court may consider:

(A) The defendant's criminal record, including subsequent criminal convictions;

(B) The defendant's behavior while incarcerated;

(C) The circumstances surrounding the offense, including, but not limited to, whether the conviction was entered into pursuant to a plea deal; and

(D) Any other factors the court deems relevant.

(2) If the court finds that the defendant is indigent, using the criteria set out in § 40-14-202(c), the court shall appoint counsel to represent the defendant on such a motion.

(3) The court shall not entertain a motion made under this subsection (h) to resentence a defendant if:

(A) A previous motion made under this subsection (h) to reduce the sentence was denied after a review of the motion on the merits;

(B) Resentencing the defendant to a shorter period of confinement for this offense would not reduce the defendant's overall sentence or lead to an earlier release; or

(C) The defendant has previously applied to the governor for a grant of executive clemency on or after December 2, 2021, for the same offense and has been denied.

(4) This subsection (h) does not require a court to reduce any sentence pursuant to this section.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it, and applies to sentencing for offenses committed before September 1, 2020.